IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5599 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANATBHAI SHANTILAL PARIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5599 of 2000

MR BS PATEL for Petitioners No. 1-10

MRS RANJAN B PATEL for Petitioners No. 1-10

PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondents No. 2,3

MR JT TRIVEDI for Respondent No. 3

MR BJ TRIVEDI for Respondent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 18/12/2001

CAV JUDGEMENT

The present applicants Nos. 1 to 10 who are joined as accused Nos. 3 to 12 in complaint (Pre-Inquiry No. 27/2000) lodged by the present opponent No. 3 (original complainant) have, by filing this present application under Sec. 482 of the Criminal Procedure Code, 1973 (for short "Cr.P.C."), requested this Court to quash and set aside the aforesaid complaint which is annexed as Annexure : A, and order dated 21/9/2000 passed by the learned Judicial Magistrate, First Class, Rajpipla (who will be referred to hereinafter as the "learned J.M.F.C." for short) below said complaint.

2. The facts leading to this present application in a nutshell are as follows:

2.1 As per complaint, accused Nos. 1,2 and 3 shown in the complaint Annexure : A are serving as Computer Clerk, Assistant Manager and Manager respectively in the Rajpipla Nagarik Sahakari Bank Ltd., Rajpipla (which will be referred to hereinafter as the "Bank" for short) and as such, they are public servants. Accused Nos. 4 and 5 are Chairman and Managing Director respectively of the said Bank, while accused Nos. 6 to 12 are the members of the Board of Directors of the said Bank. It is the case of the complainant who is one of the shareholders of the said Bank, that accused Nos. 1, 2 and 3 have, in collusion with each other, misappropriated a huge amount of Rs. 1,14,143/- of the said Bank by making false entries in the Account Books and Pass Books of different account holders during the period between 21-07-1998 and 06-03-1999. It is also the case of the complainant that accused Nos. 1,2 and 3 have, by doing said misdeeds, committed offences punishable under Secs. 409, 465, 466, 467, 468, and 471 of the Indian Penal Code.

2.2 As per the case of the complainant, aforesaid facts were brought to the notice of accused Nos. 4 to 12, who at the relevant point of time were in the direct management and control of the Bank, as a result of which, a resolution was passed in the Meeting of the Managing Committee of the said Bank on 25/8/1999. Pursuant to decision taken in that meeting, accused No.1 was suspended. In the said meeting, it was also decided to hold a Preliminary Inquiry for misdeeds committed by accused Nos. 1 to 3, and for that, one Shri H.O.Madhhiwala practising Advocate of Rajpipala was appointed as one man Preliminary Inquiry Authority. Shri H.O.Madhhiwala made a preliminary inquiry as desired by the management of the Bank and submitted his report dated 2nd December, 1999 which is at Annexure : B.

2.3. It is the case of the complainant that the said Shri Madhhiwala recommended the management of the Bank to take a departmental disciplinary action against accused No.1 Shri Dashandi and one Jayendrasinh Rathod and another Bharatbhai Pandya (latter two are not accused in the case) who are representatives of the Union of Bank Employees. He also recommended the management of the Bank to initiate a criminal proceeding against accused No.1 Shri Dashandi for offences punishable under Secs. 403-406-408-420-426-467 -468 and 471 of the Indian Penal Code. He also recommended the management to take a criminal action against accused No.2 Shri Rao for abetting accused no.1 in the commission of the said offences. As stated in the complaint, on receipt of report dated 2nd December, 1999 from Shri Madhhiwala, accused Nos. 4 to 12 did fail to lodge a complaint against the concerned employees against whom recommendation was made by Shri Madhhiwala, and therefore, as alleged by the complainant, accused Nos. 4 to 12 have also committed an offence of abetment for the offence committed by accused Nos. 1 to 3. And therefore, the complainant, who is a shareholder of the said Bank, lodged his private complaint in the Court of the learned J.M.F.C. Rajpipala on 21-09-2000. As stated in the complaint, till 21-09-2000, accused Nos. 4 to 12 have neither taken any action nor initiated criminal proceedings against the aforesaid accused Nos. 1 to 3. That complaint came to be registered as Preliminary Inquiry Case No.27 of 2000. As per an order dated 21-09-2000 passed below that complaint, the learned J.M.F.C. ordered the Deputy Superintendent of Police, Narmada District to investigate into the said complaint under Sec. 156(3), Cr.P.C. and submit his report within 30 days from the date of order.

3. As against that complaint and order passed below it, original accused Nos. 3 to 12 have presented this application under Sec. 482 Cr.P.C. for the reliefs stated hereinabove.

4. Heard Shri B.S.Patel, the learned Advocate for the petitioners (original accused Nos. 3 to 12), Shri M.A.Bukhari, the learned APP for the opponent Nos. 1 and 2 and Shri J.T.Trivedi, the learned Advocate for the opponent No.3 (original complainant) in detail at length.

5. At the outset, it is pertinent to note that original accused Nos. 1 and 2 against whom serious allegations are made in the complaint relating to offences of making forged documents, cheating and

misappropriating a huge amount, have not presented this application for quashing of the complaint. Accused No. 3, who is a petitioner No.1, is a Manager of the said Bank. It is the case of the complainant that accused No.3, in his capacity as a Manager, had a direct managerial control over accused Nos. 1 and 2 and hence with his direct and indirect abetment, accused Nos. 1 and 2 could commit serious offences.

6. At this stage, it is required to be noted that when this application was first placed before this Court (Coram: D.P.Buch, J.), this Court granted ad-interim relief in terms of Para 6(B) qua the petitioners till next date. As per Para 6(B), the petitioners requested this Court to restrain the respondent No.2 i.e. Deputy Superintendent of Police, Narmada District, Rajpipala, from proceeding further in pursuance of the order passed by the learned J.M.F.C. Rajpipala in Pre-Inquiry Case No.27 of 2000 (of which the complaint is at Annexure : A dated 21-09-2000). The petitioners also requested to stay further proceedings of Pre-Inquiry No.27 of 2000 pending in the Court of the learned J.M.F.C., Rajpipala qua the petitioners, only. In view of this first initial order, the Investigating Officer was restrained from making police investigation qua the petitioners only. Aforesaid ad-interim relief has been extended from time to time.

7. During the pendency of this application, this Court (Coram: A.K.Trivedi,J.), passed the following order on 27/2/2000:

"Learned Advocate representing respondent No.3 has tendered on record affidavits in reply. On request of Ld. Advocate for the petitioner, time is granted till 13/3/2001. Learned APP is directed to ascertain from the I.O. whether any report is ready or not in respect to Inquiry Case No. 27/2000, if it is ready, ld. APP shall collect it and shall submit to the Court on the next date. I.R. to continue till then."

7.1. Pursuant to above order of this Court dated 27-02-2000, the learned Assistant Public Prosecutor submitted report dated 26th March, 2001 of Sub Divisional Police Officer, Rajpipala.

8. Before I deal with the contentions taken by rival parties, I would like to place on record the correct legal position for taking any decision under Sec. 482,

Cr.P.C.

8.1 This Court can exercise its inherent jurisdiction mainly for following three purposes:-

(a) To make such order as may be necessary to give effect to any order under Cr.P.C.;

(b) To prevent abuse of process of any Court; and

(c) Otherwise to secure the ends of justice.

9. When original accused Nos. 3 to 12 have prayed for a relief to quash and set aside the complaint lodged by opponent No.3 i.e. original complainant, it is necessary to know the ambit and scope of this Court for examining the complaint. In case of Central Bureau of Investigation,SPE.SIU (X) New Delhi Vs. Duncans Agro. Industries Ltd., Calcutta, reported in AIR 1996 SC 2452, certain guidelines are given by the Hon'ble Supreme court. For the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidence is led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the facts of the allegations, a criminal offence is constituted or not".

9.1 In case of Ashok Chaturvedi and others vs. Shitul H. Chanchani and another, reported in AIR 1998 SC 2796, it has been held as follows :

"It has been held in a number of cases that power under Sec. 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence, would be tantamount to an abuse of process of court, and therefore, there cannot be any dispute that in such case, power under Sec. 482 of the Code can be exercised. .....

The petition of complaint is a vague one and accepting the bald allegation that the shares of the complainant have been transferred on the

> forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion even if the allegations made in the complaint petition and the statement of complainant and his witnesses are taken on their face value, the offences under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code cannot be said to have been made out. This being the position in the impugned order of the Magistrate taking cognizance of the offence dated 5-2-1996 so far as it relates the appellants are concerned, cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code.
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> ..... But in view of our conclusion, allegations in the complaint petition do not make out any offence against any of the officers of the company it would be futile to allow continuance of the criminal proceedings so far as the said two officers of the company are concerned."

10. It is also well settled legal position that the complaint must disclose all necessary facts constituting the offence alleged before taking cognizance of the offence.

11. Shri B.S.Patel, the learned advocate for the petitioners, has requested this Court to quash and set aside the complaint in question and order passed below it on following four counts:

(1) Neither the complaint, nor report of the Investigating Officer discloses prima facie case against the petitioners;

(2) The complaint Annexure : A is an abuse of process committed by the original complainant, and therefore, it should be quashed;

(3) Learned J.M.F.C. at the initial stage of passing the order did not consider the facts for passing the order under Sec.202, Cr.P.C. and

(4) In view of Sec. 156, Cr.P.C., learned Magistrate

erred in passing an order to send the complaint for investigation to the Deputy Superintendent of Police, Narmada District, Rajpipala.

12. Count Nos. 1 and 2 are inter-related. As per arguments of Shri B.S.Patel, the allegations against accused Nos. 4 to 12 at their face value do not constitute the offence, and therefore, it is his contention that if such complaint is allowed to be proceeded further, it would amount to an abuse of process of the Court.

13. For Count No.3, Shri B.S.Patel has argued that looking to the facts stated in the complaint, the learned Magistrate ought to have passed an order under Sec. 202, Cr.P.C. for holding an inquiry either by Court or by Police Officer. He ought not to have sent the complaint to Police Officer for investigation under Sec. 156(3), Cr.P.C.

13.1 He has further submitted that this Court can convert an impugned order from order under Sec. 156(3), Cr.P.C. to order for inquiry under Sec.202, Cr.P.C. and after inquiry under Sec. 202, Cr.P.C. the Inquiry Officer may submit his report to the learned Magistrate, and thereafter, the learned Magistrate can pass an appropriate order either for taking cognizance or refusing to take cognizance.

13.2 Shri B.S.Patel has argued that looking to the complaint, accused no.1 is a prime accused and accused Nos. 2 and 3 have abetted accused No.1 in committing the said offences. For accused Nos. 4 to 12, it is a specific case of the complainant as alleged in the complaint that after report being submitted by one man Inquiry Authority (Shri Madhhiwala), accused nos.4 to 12 who are the responsible members of the Managing Committee of the Bank did not initiate any criminal proceeding against accused Nos. 1 to 3, and thereby they have abetted accused Nos. 1 to 3. Shri B.S.Patel has argued that looking to the allegations made in the complaint, offences had already been committed by accused Nos. 1 to 3 and for this completed offences, accused Nos. 4 to 12 did not initiate criminal proceeding, and therefore, the accused Nos. 4 to 12 cannot be said to have abetted in committing the offences by accused Nos. 1 to 3. According to him, once an offence is complete, abetment cannot take place after completion of the offence, and therefore, the complaint is required to be quashed and set aside against accused Nos. 4 to 12.

13.3 For Count No.3, Shri B.S.Patel has argued that looking to the nature of allegations made in the complaint, the learned Magistrate ought to have passed an order under Sec.202, Cr.P.C. for holding an inquiry either by the learned Magistrate or by any other Police Officer.

13.4 For Count No.4, it is submitted by Shri B.S.Patel that in view of Sec. 156(1), Cr.P.C., the learned Magistrate cannot direct the Deputy Superintendent of Police to make an investigation under Sec. 156(3), Cr.P.C., and therefore, the order passed below the complaint is illegal and it requires to be set aside.

14. Looking to the nature of submissions for Count Nos. 3 and 4, the accused Nos. 4 to 12 are at liberty to move the revisional Court to challenge the correctness, legality and propriety of said order. This Court is of the opinion that on the basis of arguments submitted for count Nos. 3 and 4, complaint cannot be set aside.

15. Shri J.T.Trivedi, the learned Advocate for the opponent No.3 who is an original complainant has emphatically argued that at this stage, this Court should not exercise powers under Sec. 482, Cr.P.C. because the investigation has already been started and in pursuance of the order passed by this Court, interim report of the Investigating Officer has been submitted to this Court. Looking to the allegations made in the complaint, and the report of the Investigating Officer, it can certainly be said that there is a prima facie case against the accused Nos. 4 to 12 and hence at this stage, this Court should not interfere with further investigation by the Investigating Officer. To bring a case of abetment under Sec.114 of the I.P.Code, Shri J.T.Trivedi has pressed into service Sec.107 of the I.P.Code. Shri J.T.Trivedi has further argued that accused Nos. 4 to 12 can submit an application under Sec. 239, Cr.P.C. to the trial Court with a prayer to discharge them from the case, if really, it is their case that no case is made out against them in the complaint. Shri J.T.Trivedi has further argued that if we read the allegations of the complainant made against accused Nos. 4 to 12 in the complaint and the report of the Investigating Officer in their juxtaposition, it can safely be said that prima facie case is made out against accused Nos. 4 to 12 and at this stage, it is not necessary to investigate further as to how that offence of abetment will be proved against accused Nos. 4 to 12.

16. Shri N.M.Bukhari, the learned APP for the State has supported the case of the complainant and submitted that the Investigating Officer has collected sufficient material to show prima facie that the case against accused Nos. 4 to 12 is made out, and therefore, the complaint cannot be quashed at this stage.

17. Looking to Sec. 482, Cr.P.C. it is a prime duty of this Court to see that if by any judicial order, there is an abuse of process of the Court, then it should be prevented by invoking jurisdiction under Sec. 482, Cr.P.C. Here in this case, accused Nos. 4 to 12 have come with a specific case that if the allegations at their face value are accepted, no offence is made out against them, and they are unnecessarily harassed by the investigation ordered by the learned Magistrate below the complaint. Under these circumstances, the complaint is required to be examined. As stated earlier, it is well settled legal position for the purpose of quashing the complaint that it is necessary to consider whether the allegations made in the complaint prima facie make out an offence or not. For quashing the complaint by way of an action at threshold, it is necessary to consider whether on the face of the allegation, a criminal offence is constituted or not. For this, the facts of this case are required to be considered. From the report of the Investigating Officer, it reveals that main offences were committed by accused No.1 during the period from 21-07-1998 to 06-03-1999. It also reveals from the report of the Investigating Officer that one account holder Shri Shankarbhai Gumabhai Bhoi of Rajpipala gave his application on 25-08-1999 in form of complaint which refers to the financial irregularities committed in his Account No. 14510. On receipt of such complaint, accused No.3 who is a Manager of the Bank informed accused nos. 4 to 12 with regard to said application of Shankarbhai Gumabhai Bhoi. On the strength of that application received, the Board of Directors of the Bank passed a resolution on 27-08-1999 and decided to suspend the prime accused Nos.1 with immediate effect. It was also decided by the Board of Directors to constitute a Committee comprising five members including one Advocate and one representative of the Union of the Bank Employees for making indepth inquiry in the matter.

17.1 Thereafter, on 26-10-1999, a meeting of Board of Directors was convened and in that meeting, a resolution was passed and an Advocate Shri Harishbhai Ochchhavlal Madhhiwala was appointed as one man Preliminary Inquiry Authority. Pursuant to that appointment of Shri

Madhhiwala, Shri Madhhiwala made a preliminary inquiry and submitted his report dated 02-12-1999 to the Bank. That report is at Annexure : B. and as stated earlier, Shri Madhhiwala recommended the Bank to take disciplinary action against Jayendrasinh Rathod and Bharatbhai Pandya, who are the representatives of the Union of Bank Employees, on the ground that they did not co-operate Shri Madhhiwala during the course of preliminary inquiry. It is required to make it clear that said Shri Jayendrasinh Rathod and Bharatbhai Pandya are not accused in the complaint.

18. Shri Madhhiwala also recommended the Bank to initiate criminal proceedings against accused No.1 Rajsinh Dashandi for the offences punishable under Secs. 403-406-408-420-467-468 and 471 of the I.P.Code. Shri Madhhiwala also recommended the Bank to initiate criminal proceedings against accused No.2 for abetment to accused No.1 in committing aforesaid offences. The report of Shri Madhhiwala was placed before the Managing Committee of the Board of Directors on 02-12-1999. Accused Nos. 4 to 12 who are the members of the Board of Directors of the Bank, instead of lodging the complaint against accused Nos. 1 and 2, by passing a resolution dated 31/1/2000 decided to take departmental action against accused No.1 by stopping his increment for five years and not allowing him (accused No.1) to work on the table on which financial transactions of the Bank are being carried out. The Bank authorities also warned accused No.1 that if in future any financial irregularities are noticed in his work, he will be removed from service without any notice. Accused No.1 was taken-up back on service by cancelling suspension. The main crux of the complaint is that accused No. 4 to 12 have purposely not taken any criminal or other action against accused Nos. 1 and 2 and thus, they have indirectly protected said two accused by hiding misdeeds committed by said two accused. On the basis of these facts, straightway allegation is made by the complainant that accused Nos. 4 to 12 have committed the offence by allowing the accused Nos. 1 and 2 to commit the offences. As per arguments of Shri B.S.Patel, the main and serious offences were committed by accused Nos. 1 and 2 and the offences were complete on 6/3/1999, and therefore, question does not arise for accused Nos. 4 to 12 in abetting accused Nos. 1 and 2 by not taking any criminal action against accused Nos. 1 and 2 after Shri Madhhiwala submitted his report on 2nd December, 1999. There is a gap of considerable long period in between 06-03-1999 and 02-12-1999. Looking to these facts, it cannot be said that by not taking action after 02-12-1999, accused nos. 4 to 12 have committed

offence of abetment with regard to main offences committed by accused Nos. 1 and 2 during the period between 21-07-1998 and 6-03-1999. In view of this set of facts, the allegations made in the complaint against accused Nos. 4 to 12, if read at their face value, do not constitute any offence against accused Nos. 4 to 12. In view of this position, the complaint cannot be allowed to continue further against accused Nos. 4 to 12. This Court is of the opinion that if such complaint is allowed to be continued to proceed further, it would amount to an abuse of process, and therefore, the complaint qua accused Nos. 4 to 12 is liable to be quashed and set aside.

19. Shri J.T.Trivedi has argued that the allegations against accused Nos. 4 to 12 is for an offence of abetment of the offences committed by accused Nos. 1 and 2. To know as to what is an abetment, he has pressed into service Sec. 107 of the I.P.Code. Sec. 107 reads as follows:-

Sec.107: Abetment of a thing.

A person abets the doing of a thing, who-

First- Instigates any person to do that thing;
or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation: A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

20. Shri J.T.Trivedi has argued that looking to Clause (iii) of Sec.107 of the I.P.Code, if some person

intentionally aids by illegal omission the doing of things, it can be said that he has abetted the doing of that thing. Shri J.T.Trivedi has drawn my attention to a copy of letter dated 22nd May, 2000 of the District Registrar, Sahakari Mandli Narmada addressed to the Chairman/Manager of the Rajpipala Nagarak Sahakari Bank Ltd., Rajapala. It is at Page 47. He has argued that by this letter, the District Registrar informed the Chairman that though Shri Madhhiwala has recommended the Bank to initiate criminal proceeding against Mr. Dashandi for offences punishable under secs. 403-406-408-420-426-468 and 471 of the I.P.Code and also against Mr. Rao for offence of abetment, the Bank has not initiated any criminal proceeding, and therefore, the District Registrar directed the Chairman to initiate criminal proceeding against Mr. Dashandi and Mr. Rao.

20.1. Shri Trivedi has drawn my attention to letter dated 10-06-2000 written by the Manager of the Bank addressed to the District Registrar which is at Page 48. The Bank informed the District Registrar that the Bank has not taken any criminal action against Shri R.J.Dashandi and the Bank does not want to initiate any action at that stage. By placing reliance on these two letters, Shri J.T.Trivedi has argued that the District Registrar has power to give such type of directions under Sec.160 of the Gujarat Co-operative Societies Act 1961 (for short "the Act"), and if such directions are not followed, then it can be said that the Bank authorities have committed omission of act which they were supposed to do, and therefore, this omission is illegal and thereby accused Nos. 4 to 12 have intentionally aided the doing of a thing, and therefore, the case against accused Nos. 4 to 12 falls under third clause of Sec.107 of the I.P.C.

21. Shri B.S.Patel has argued that the powers to give directions are given to the Registrar. As per Sec.3(1) of the Act, the Government has to appoint a person to be a Registrar of the Co-operative Societies for the State. The District Registrar is not a Registrar of Co-operative Societies for the State. He is simply an Assistant Registrar. Admittedly, the District Registrar is not a Registrar referred to in Sec.3(1) of the Act. As per Sec.3(2), the District Registrar is appointed by Government and as per Sec.3(4) of the Act, the District Registrar has to assist the Registrar of Co-operative Societies for the State, and therefore, directions given in the notice dated 22nd May, 2000 by the District Registrar cannot be said to be the directions given by the Registrar of the State level, and therefore, if the

direction given by the District Registrar is not complied with, it cannot be said that the Bank authorities have contravened the provisions of sub-sec.(3) of Section 160 of the Act. Under these circumstances, Sec.160 cannot be attracted in this case, and therefore, the arguments of Shri J.T.Trivedi are not acceptable on the ground that the notice dated 22nd May, 2000 is not a notice issued by the Registrar of the State level.

22. Shri J.T.Trivedi has argued that the contention taken by accused Nos. 4 to 12 cannot be considered at this stage. They can make an appropriate application in the trial Court for discharging them from the case.

23. As against the arguments of Shri J.T.Trivedi, Shri B.S.Patel has cited an authority in the case of SHANKU CONCRETES PVT. LTD. AND ORS vs. STATE OF GUJARAT, reported in 2000 (2) = 42(2) GLR PAGE 1705, wherein this Court has held that the accused has right to approach the High Court at any stage for quashing with the allegations that complaint prima facie does not disclose any offence. It has further been held that when it appears to the High Court under Sec.482 of the Code that complaint does not disclose any offence, it has ample powers to quash the proceedings and the complaint and accused need not in all cases be relegated to the learned Magistrate directing the accused to file proper application for discharge or dropping of the proceedings. In this cited case, a case of Pepsi Foods Ltd. Vs. Special Judicial Magistrate, reported in 1998 (5) SCC 749 has been referred to. In this case of Pepsi Food Ltd., the Apex Court has observed that-

> "No doubt the Magistrate can discharge the accused at any stage of the trial, if he found the charge to be groundless but that does not mean that the accused cannot approach the High Court under Sec. 482 of the Criminal Procedure Code or under Art. 227 of the Constitution of India to have the proceeding quashed against him when the complaint does not make out any case against him and still must undergo agony of a criminal trial".

In view of this legal position, complainant cannot ask the accused to file an application before the trial Court for discharge from the case.

24. Shri J.T.Trivedi has cited following authorities in reply to the authorities cited by Shri B.S.Patel:-

(1) In reply to the case of CENTRAL BUREAU OF INVESTIGATION (THROUGH S.P. JAIPUR) vs. STATE OF RAJASTHAN, reported in 2001(1) 42(1) GLR 907, Shri Trivedi has cited Sec.36 of Cr.P.C. which speaks for powers of superior officer of a Police. The superior officer below in rank of an officer in charge of Police Station may exercise the same powers throughout the local area to which he is appointed, as may be exercised by such officer within the limits of his station. In view of the above, this Court cannot accept the arguments of Shri B.S.Patel for setting aside the complaint on the ground that the Magistrate cannot direct the Deputy Superintendent of Police to investigate the case under Sec.156(3), Cr.P.C. For arguments of Shri B.S.Patel, he may file a separate revision application to challenge an order of the learned Magistrate directing the Dy. Superintendent of Police, Narmada District, Rajpipala to investigate the case, and therefore, Sec.36 of Cr.P.C. is not considered.

(2) STATE OF T.N. vs. THIRUKKURAL PERUMAL, reported in 1995(2) SCC 449, in which it has been held that:

"High Court's power to quash FIR and criminal proceedings should be exercised sparingly keeping in view the guidelines laid down by the Supreme Court in various decisions. It has further been held that the High Court is not justified in evaluating the genuineness and reliability of allegations made in the FIR or complaint on the basis of evidence collected by the Investigating Officer.

There cannot be any dispute with regard to legal position settled in this case".

(3) M/S JAYANT VITAMINS LTD. vs. CHAITANYAKUMAR AND ANOTHER, reported in AIR 1992 SC 1930, wherein it has been held that:

"Investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the

investigation. Thus where the investigation which is still on its way and the further investigation in the offence is legally permissible as contemplated by S.173(8) of Cr.P.C., the quashing of investigation by the High Court would not be permissible."

Here in this case, during the course of arguments -in-re , Shri B.S.Patel has faily conceded that he does not press relief with regard to quashing of order dt. 21/9/2000 of the learned Magistrate passed below complaint in question. When the petitioners do not press this application for quashing of the order dated 21/9/2000, question does not arise for investigation to be started subsequent to this order dated 21/9/2000, and therefore, the above authority cited by Shri J.T.Trivedi is not applicable to the present case.

(4) S.M.DATTA vs. STATE OF GUJARAT AND ANOTHER, reported in 2001 AIR SCW 3133, wherein it has been held as under:

FIR ought not to be thwarted at initial stages

'if an offence is disclosed', but in the event, however, the materials do not disclose an offence, no investigation should normally be permitted. Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude neither it is a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise.

Here in this case, on hand at the initial stage, complaint does not disclose any offence against accused Nos. 4 to 12, and therefore, this authority is not applicable to the facts of the present case.

(5). RAJESH BAJAJ vs. STATE NCT OF DELHI AND OTHERS, reported in AIR 1999 SC 1216, wherein it has been held as under:

> "Complainant is not required to reproduce verbatim all ingredients of offence alleged in body of complaint".

(6) M.N.DAMANI vs. S.K.SINHA AND OTHERS, reported in AIR 2001 SUPREME COURT 2037. This authority is not applicable to the facts of the present case on the ground that the said case was decided on its own facts and circumstances. The facts and circumstances of the cited case are totally different to that of the present case.

(7) USHA AHUJA vs. STATE OF HARYANA AND OTHERS, reported in AIR 1999 SUPREME COURT 3242. In this case, a civil suit was pending between the parties. Petition was filed by accused for quashing the FIR. The Court had stayed the filing of final report under Sec.173, Cr.P.C. by police till disposal of civil suit. The apex court held that it was not proper to stay the criminal proceedings. Here in this case, no civil suit is filed and the Court has not passed any order staying criminal proceedings till final disposal of the suit, and therefore, this authority is not applicable in this case.

25. In view of discussions made hereinabove, and on reading the complaint, it clearly appears that there is no prima facie case against accused Nos. 4 to 12 for an offence of abetment with regard to offences committed by accused Nos. 1 and 2. Under the circumstances, if such type of complaint is allowed to be proceeded further, it will be an abuse of process of Court, and therefore, the complaint against accused Nos. 4 to 12 deserves to be quashed and set aside.

26. So far as accused Nos. 3 who is a Manager of the Bank, is concerned, Shri B.S.Patel argued that the Investigating Officer has made a report against accused No.3 stating that accused No.3 being a Manager in his supervisory capacity did not pay any due and proper attention and did not keep close watch over the working system in the Bank, as a result of which the accused Nos. 1 and 2 were able to do their acts of committing the aforesaid offences; and thus as per the report of the Investigating Officer, accused no.3 indirectly co-operated accused Nos. 1 and 2 in committing the criminal offences, and therefore, the accused no.3 is responsible for the said offences. Shri Patel has argued that at the best, it can be said that accused No.3 was

negligent in performing his duties, and therefore, accused No.3 cannot be held responsible by holding that accused No.3 abetted accused Nos.1 and 2.

26.1 Whether accused No.3 was negligent in performing his duties or not is a question of fact and it requires to be decided on evidence, and therefore, it would be too premature to decide that accused No.3 was negligent in his duties by not keeping close watch over the activities of accused Nos. 1 and 2. Therefore, this Court is of the view that at present, there is a prima facie case against accused No.3 who is a petitioner No.1 herein, and therefore, this Court is not satisfied with the arguments of Shri B.S.Patel that the complaint against accused No.3 is required to be quashed and set aside.

27. In view of the discussions made hereinabove, this present application is partly allowed. This petition, so far as it relates to accused No.3 i.e. petitioner No.1 Shri Sanatbhai Shantibhai Parikh, is dismissed, and so far as it relates to accused Nos. 4 to 12 whose names appear as petitioner Nos. 2 to 10 in the application, is hereby allowed and complaint Annexure : A is quashed and set aside.

Ad-interim relief granted by this Court on 27th September, 2000, so far as it relates to petitioner No.1 only shall stand vacated forth with, and ad-interim relief so far as it relates to petitioner Nos. 2 to 10 (original accused Nos. 4 to 12), is made absolute.

Copy of the writ of this order be sent to the concerned Investigating Officer immediately, as also to the learned Magistrate in whose Court, complaint bearing Pre Inquiry No.27 of 2000 is pending, forth with.

Date: 18/12/2001. (H.H.MEHTA,J.)
ccshah

After pronouncement of judgment, Shri B.S.Patel, the learned Advocate for the petitioners requests this Court that the implementation and operation of the judgment and order dt. 18/12/2001 be stayed for two weeks from today so far as petitioner No.1 is concerned, to enable him to approach the appropriate Court for appropriate reliefs. In view of the facts and circumstances of the case, the request is granted as prayed for.

Date: 18/12/2001. (H.H.MEHTA,J.)
ccshah